

**MOTION FILED**  
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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1986

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BURLINGTON NORTHERN RAILROAD COMPANY,  
*Petitioner,*

v.

OKLAHOMA TAX COMMISSION, *et al.*,  
*Respondents.*

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On Writ of Certiorari to the United States  
Court of Appeals for the Tenth Circuit

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**MOTION FOR LEAVE TO FILE A BRIEF  
AMICUS CURIAE AND BRIEF AMICUS CURIAE  
OF THE AMERICAN BUS ASSOCIATION  
IN SUPPORT OF PETITIONER**

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December 12, 1986

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**MOTION OF THE AMERICAN BUS ASSOCIATION  
FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE***

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The American Bus Association ("ABA") respectfully moves this Court for leave to file the attached Brief *Amicus Curiae*.<sup>1</sup> ABA is a national trade association, the membership of which includes approximately 700 intercity bus companies located throughout the United States. One of ABA's primary responsibilities is to represent its members in Congress and in the courts on matters of general applicability to the bus industry.

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<sup>1</sup> Petitioner has consented to the filing of ABA's brief, and the letter containing such consent has been filed with the Clerk. However, Respondents have withheld consent, and accordingly this motion for leave to file the ABA brief is submitted.

The Tenth Circuit decision in this case could have a serious, detrimental effect on intercity bus companies. The court construed the prohibition against discriminatory state tax treatment of railroad property contained in Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("the 4-R Act"), Pub. L. No. 94-210, 90 Stat. 31, 54 (codified at 49 U.S.C. § 11503 (1982)), in an unduly restrictive manner. It found that Section 306 confers federal court jurisdiction in cases of discriminatory overvaluation of railroad property only when there is a strong pretrial showing of purposeful overvaluation with discriminatory intent. Petitioner's Appendix at 2a.

A parallel provision, 49 U.S.C. § 11503a, governs the bus industry. Motor carriers of passengers were brought under the protection of this provision by Section 20 of the Bus Regulatory Reform Act of 1982 ("the BRRA"). Pub. L. No. 97-261, 96 Stat. 1122 (1982).<sup>2</sup>

Since the language of Sections 11503 and 11503a is very similar, the Circuit Court's decision is very likely to serve as precedent for future judicial decisions in the Tenth Circuit construing § 11503a and could well serve as precedent for decisions in other jurisdictions. The likelihood of this decision being followed as precedent in Section 11503a cases is enhanced by the fact that there are no reported Circuit Court decisions interpreting Section 11503a.

ABA was the principal industry representative in the Congressional proceedings leading up to the passage of the BRRA and is thus uniquely able to address both the Congressional intent in promulgating Section 20 of the BRRA and the detrimental effects on the bus industry of an unduly restrictive interpretation of the parallel railroad provision.

<sup>2</sup> Section 11503a, as originally enacted by the Motor Carrier Act of 1980, Pub. L. No. 96-296, § 26(a)(1), 94 Stat. 823, applied only to motor carriers of property.

ABA's presentation of views on behalf of the bus industry in support of petitioner will show that the Tenth Circuit decision could deprive the bus industry of valuable protection granted by the BRRA. It will also demonstrate that the stated Congressional intent in passing Section 11503a provides further support for Petitioner's position concerning Congressional intent underlying the very similar language of Section 306 of the 4-R Act.

Respectfully submitted,

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INTEREST OF THE *AMICUS CURIAE*

The American Bus Association is the national trade association of the intercity bus industry. ABA represents the majority of the Class 1 bus companies operating in the United States.<sup>1</sup> A primary purpose of ABA is to

<sup>1</sup> The Interstate Commerce Commission defines Class 1 bus companies as those with more than \$3,000,000 in annual revenue. 49 C.F.R. § 1206.2-1 (1985).

A list of all Class 1 bus companies that are ABA members appears in the attached Appendix.



advocate the enactment of uniform, just and proper laws applicable to the bus industry and reasonable and equitable administration of those laws. ABA By-Laws at Section 1(b) (Oct. 2, 1985).

The law that fundamentally changed federal and state regulation of the intercity bus industry was the Bus Regulatory Reform Act of 1982 ("the BRRA"), Pub. L. No. 97-261, 96 Stat. 1102 (1982) (codified in scattered sections of 49 U.S.C.). Section 20 of the BRRA included motor carriers of passengers in the protection against state tax discrimination contained in 49 U.S.C. § 11503a. Pub. L. No. 97-261, § 20, 96 Stat. 1122 (1982). Section 11503a(b) makes it unlawful for states to:

- (1) assess motor carrier transportation property at a value that has a higher ratio to the true market value of the motor carrier transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;
- (2) levy or collect tax on assessment that may not be made under paragraph (1) of this subsection;
- (3) levy or collect an ad valorem property tax on motor carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

Thus, this provision protecting motor carriers of passengers is very similar to Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("the 4-R Act"), Pub. L. No. 94-210, 90 Stat. 31, 54 (codified at 49 U.S.C. § 11503 (1982)), which is the subject of this proceeding. In language similar to Section 11503, Section 11503a gives district courts of the United States jurisdiction "to prevent a violation of subsection (b) of this section" and provides that the "burden of proof in determining assessed value and true market value is governed by State law." Section 11503a(c).

In the present case, the Circuit Court upheld the District Court's decision that in cases involving alleged overvaluation of railroad property for assessment purposes, District Court jurisdiction existed only if plaintiffs could make before trial "a strong showing of intentional discrimination" in the valuation process and that Burlington Northern failed to meet that standard. Petitioner's Appendix at 12a, 14a. Given the substantial similarity of Sections 11503 and 11503a, this decision could serve, particularly in the Tenth Circuit, as precedent for courts interpreting Section 11503a and could lead to significant limitations on the rights of motor carriers of passengers under Section 11503a.

The possibility of such an occurrence is enhanced by the lack of case law interpreting Section 11503a. The only two reported cases are the related cases of *Arkansas-Best Freight System v. Cochran*, 546 F. Supp. 904 (M.D. Tenn. 1981) (Cochran I) and *Arkansas-Best Freight System v. Cochran*, 546 F. Supp. 915 (M.D. Tenn. 1982) (Cochran II). The court in Cochran I described Sections 11503 and 11503a as "virtually identical", 546 F. Supp. at 910, and the court in both cases cited as controlling precedent, federal court decisions interpreting Section 11503. 546 F. Supp. at 910; 546 F. Supp. at 918.

Thus, the ruling of the court below, which misinterprets Section 11503 and which conflicts with several other federal court decisions, could severely restrict the Section 11503a protection against discriminatory state taxes provided to ABA members. For this reason, ABA strongly supports the Petitioner's position.

### SUMMARY OF ARGUMENT

There is no statutory basis for the Tenth Circuit's distinction between state discriminatory taxes based on assessment discrimination and state discriminatory taxes based on valuation discrimination, nor for its determina-

tion that jurisdiction does not lie in valuation discrimination cases unless purposeful overvaluation with discriminatory intent on the part of the state is shown before trial. The plain language of Section 11503 and the parallel statute governing motor carriers, and the legislative history of Section 11503a demonstrate conclusively congressional intent to prohibit state taxes that discriminate against motor carriers whatever the methodology or intent and to provide a federal judicial remedy for all such discrimination. Section 11503a and its legislative history therefore lend support to Petitioner's position that Section 11503 does not have the threshold jurisdictional limitations imposed by the Tenth Circuit when valuation discrimination is involved.

#### ARGUMENT

Like the 4-R Act, the BRRA removed the effect on interstate motor carriers of passengers of a broad range of unreasonable or discriminatory state laws or regulatory actions. The comprehensive legislative framework adopted by Congress in the BRRA included provisions enabling bus carriers to overturn or avoid unreasonable or discriminatory regulatory actions limiting entry into or exit from intercity bus service or requiring intrastate rate levels below those of the interstate level. Pub. L. No. 97-261, §§ 6, 16, & 17. 96 Stat. 1102, 1103, 1115, 1117 (codified at 49 U.S.C. §§ 10922(c)(2), 10935, 11501 (e) & (f) (Supp. 1985)). None of these provisions requires that discriminatory state intent be shown before jurisdiction under the provision can be invoked.

Section 20 of the BRRA, as part of this overall legislative framework, enables motor carriers of passengers to avoid the effects of discriminatory state taxation by bringing these motor carriers under the broad protection of Section 11503a, which previously had been enacted for the benefit of motor carriers of property by the Motor Carrier Act of 1980, Pub. L. No. 96-796, § 31, 94 Stat.

793, 823 (1980) (codified at 49 U.S.C. § 11503a (Supp. 1985)).

As with other provisions of the BRRA, Section 11503a contains nothing that would indicate that discriminatory intent on the part of the state is a jurisdictional prerequisite. It simply states that a State "may not" assess motor carrier transportation property at a higher value to true market value ratio than the ratio assigned to other commercial and industrial property and may not levy or collect a tax based on that assessment. Section 11503a(b)(1). The statute goes on to give district courts of the United States jurisdiction with other federal and state courts "to prevent a violation of subsection (b) of this section". Section 11503a(c). There is nothing in the statute that qualifies this jurisdiction by means of a special burden of proof imposed on plaintiffs in valuation cases. In fact, rather than creating a special jurisdictional burden of proof, the statute provides that the "burden of proof in determining assessed value and true market value is governed by State law". *Id.*

Likewise, the legislative history makes it clear that Section 20 of the BRRA was intended to give motor carriers of passengers blanket protection against discriminatory state taxes under Section 11503a. The House Report, which originated Section 20 of the BRRA, states unequivocally:

this provision makes current law which prohibits the assessment, levying or collecting of taxes on motor carrier property in a manner different from that of other commercial and industrial property applicable to motor carriers of passengers.

H.R. Rep. No. 334, 97th Cong., 1st Sess. 47 (1981).

The Tenth Circuit decision below also conflicts with the decisions in *Cochran I* and *Cochran II*, both of which overturned discriminatory application of state taxes against motor carriers without regard to the intent or

particular form of the discrimination. 546 F. Supp. at 915; 546 F. Supp. at 919.

In sum, the Tenth Circuit decision below conflicts not only with the plain meaning and legislative history of Section 11503 and the decisions of other circuits interpreting that statute, the decision also conflicts with the plain meaning and legislative history of Section 11503a, the parallel provision for motor carriers, and the judicial decisions that have interpreted that provision.

### CONCLUSION

The Court should reverse the order and judgment of the Tenth Circuit Court of Appeals and should remand the case for consideration of Petitioner's Section 306 claim without regard to the discriminatory intent, or lack thereof, of Respondents.

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### APPENDIX

#### CLASS 1 BUS COMPANY AMERICAN BUS ASSOCIATION MEMBERS

Trailways Lines, Inc.  
Carolina Coach Company  
Short Line-Hudson Transit Lines  
Bonanza Bus Lines  
Jefferson Lines, Inc.  
Las Vegas-Tonopah-Reno Stage Line, Inc.  
Adirondack Trailways  
Gold Line, Inc.  
Frank Martz Coach Company (Martz Trailways)  
Capitol Trailways of Pennsylvania  
Blue Bird Coach Lines, Inc.  
Oklahoma Transportation Company, Inc.  
Peter Pan Bus Lines, Inc.  
Carl R. Bieber, Inc.  
Eyre Bus Service, Inc.  
Harran Transportation Co.  
M K & O Coach Lines  
Pacific Trailways  
Starr Tours  
Blue & White Lines, Inc.  
Jack Rabbit Lines, Inc.  
Southeastern Trailways, Inc.  
Capital Motor Lines  
The Arrow Line, Inc.  
Panhandle Trailways  
Seashore Transportation Co.  
Intermountain Transportation Company  
Continental Air Transport  
Connecticut American Charters  
Michigan Trailways  
Voyageur Enterprises Ltd.